



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 13

DOWELL & DOWELL, P.C.
Suite 309
1215 Jefferson Davis Highway
Arlington, VA 22202-3124

MAILED

APR 8 2003

OFFICE OF DIRECTOR
GROUP

In re Application of)
IFERGAN et al.)
Application No. 09/669,492)
Filed: September 25, 2000)
For: EYEGLASS DEVICE)

DECISION ON PETITION
TO WITHDRAW THE HOLDING
OF ABANDONMENT

This is a decision on the petition, filed on November 26, 2002, to withdraw the holding of abandonment of the above-identified application. No fee is required for this petition.

The petition is **GRANTED**.

This application was held abandoned for failure to respond in a timely manner to the Office action of April 11, 2002. A Notice of Abandonment was mailed on November 12, 2002.

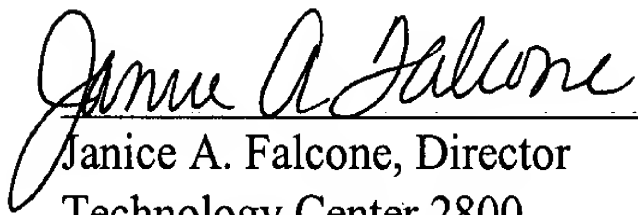
Petitioner states that a response to the Office action was filed on October 11, 2002, along with a check in payment of the extension-of-time fees, but the examiner held the application to be abandoned because the amendment was unsigned. Petitioner argues that the response was a *bona fide* attempt to advance the application to final action, and in accordance with MPEP 714.03, the applicant should be provided a new time period under 37 CFR 1.135(c) to supply the omitted signature. The petition includes a signed copy of the response to the Office action of April 11, 2002.

An inspection of the application file indicates that the examiner did not consider the response filed on October 11, 2002 to be either a proper reply, or a *bona fide* attempt at a proper reply to the non-final Office action, for the reason that the amendment is unsigned. While the response is not a proper reply insofar as it is unsigned, the examiner does not indicate why the response is not a *bona fide* attempt at a proper reply. An inspection of the response indicates that the applicant attempted to address the rejections in the Office action of April 11, 2002, and thereby to advance the application to final action. Accordingly, it is concluded that the response filed on October 11, 2002 was a *bona fide* attempt at a proper reply to the Office action, but contained a serious omission, namely, the response was unsigned.

As set forth in MPEP 714.03, where an amendment is *bona fide* but contains a serious omission and there is insufficient time remaining for applicant's reply to be filed within the time period for reply to a non-final Office action, the examiner **should** set a 1-month period to complete the reply pursuant to 37 CFR 1.135(c). Thus, the examiner should have given the applicant a 1-month period to correct the omission (e.g., provide ratification), in lieu of holding the reply inadequate to avoid abandonment under 35 U.S.C. 133 and 37 CFR 1.135. See also MPEP 710.01. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

In view of the filing of a signed copy of the response to the Office action of April 11, 2002, it is deemed appropriate under the present circumstances to accept the response as being timely filed.

The application file is being forwarded to the technical support staff for Technology Center 2800 for processing of the response filed on October 11, 2002, and ratified on November 26, 2002.



Janice A. Falcone, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

JF/EG/jc